

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF GEORGIA  
ATLANTA DIVISION**

FRED LEDFORD,	::	MOTION TO VACATE
Movant,	::	28 U.S.C. § 2255
	::	
v.	::	CRIMINAL NO.
	::	1:13-CR-0189-MHC-1
UNITED STATES OF AMERICA,	::	
Respondent.	::	CIVIL ACTION NO.
	::	1:15-CV-0236-MHC-RGV

**FINAL REPORT AND RECOMMENDATION**

Movant Fred Ledford submitted a “Motion to Compel Government to File Fed. Crim. R. 35(b) [Motion] for Substantial Assistance,” [Doc. 33], which the Court construed as Ledford’s first motion to vacate, set aside, or correct his sentence pursuant to 28 U.S.C. § 2255, see [Doc 34]. On January 28, 2015, the Court ordered Ledford to submit an amended § 2255 motion within thirty days. [Doc. 36]. The Court advised Ledford that failure to respond to the order would be interpreted as a withdrawal of the motion. [Id. at 2].

Ledford then sought an extension of time to respond to the Court’s order, [Doc. 37], and requested a free copy of his sentencing transcript, [Doc. 38]. On March 2, 2015, the Court denied Ledford’s request for his sentencing transcript, but granted him an extension until March 23, 2015, to comply with the Court’s January 28, 2015, order.

[Doc. 39]. To date, Ledford has not submitted an amended § 2255 motion, and the Court interprets this as a withdrawal of his initial motion.

Moreover, Federal Rule of Civil Procedure 41(b) allows a district court to sua sponte dismiss a habeas corpus action without prejudice if the petitioner fails to prosecute the action or to comply with any court order. Allen v. Albright, No. 09-00351-CG-B, 2009 WL 3062006, at \*1 (S.D. Ala. Sept. 18, 2009). “In addition to its power under Rule 41(b), a court also has the inherent ability to dismiss a claim in light of its authority to enforce its orders and provide for the efficient disposition of litigation.” Zocar v. Castro, 465 F.3d 479, 483 (11th Cir. 2006) (citing Link v. Wabash R.R., 370 U.S. 626, 630-31 (1962)).

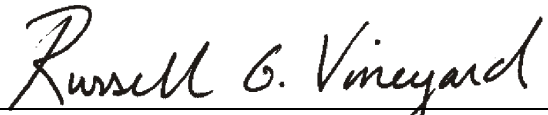
The Court’s Local Rules also provide that “[t]he court may, with or without notice to the parties, dismiss a civil case for want of prosecution if . . . [a] plaintiff . . . shall, after notice, . . . fail or refuse to obey a lawful order of the court in the case.” LR 41.3A(2), NDGa. Because Ledford has not complied with the Court’s orders to submitted an amended § 2255 motion, even after being granted an extension of time to comply, his case should be dismissed. See Martinez v. United States, Nos. 1:08-CR-0363-TWT-RGV-5 and 1:12-CV-1202-TWT-RGV, 2012 WL 3989952, at \*2 (Aug. 6, 2012) (recommending dismissal without prejudice of § 2255 motion for movant’s

failure to comply with lawful orders of the court), report and recommendation adopted by, 2012 WL 3989944, at \*1 (N.D. Ga. Sept. 10, 2012). For the foregoing reasons, the undersigned **RECOMMENDS** that this action be **DISMISSED WITHOUT PREJUDICE** for petitioner's failure to prosecute and failure to obey the Court's orders of January 28, and March 2, 2015.

**IT IS FURTHER RECOMMENDED**, pursuant to Rule 11 of the of the Rules Governing Section 2255 Proceedings for the United States District Courts, that the Court decline to grant petitioner a certificate of appealability.

The Clerk is **DIRECTED** to terminate the referral of the § 2255 motion to the Magistrate Judge.

**SO RECOMMENDED**, this 3rd day of April, 2015.

A handwritten signature in cursive script, reading "Russell G. Vineyard", is written over a horizontal line.

RUSSELL G. VINEYARD  
UNITED STATES MAGISTRATE JUDGE